IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2470 OF 1991

Shri.Baban Rama Shirose & Ors. .. Petitioners

Vs.

Shri.Malu Balu Hawale & Ors. .. Respondents

Mr.S.G.Karandikar for the Petitioners.
Mr.A.H.Palekar, A.G.P. for Respondent Nos.2 and 3.

CORAM : DR.S.RADHAKRISHNAN,J.

DATE : 1ST SEPTEMBER, 2006.

P.C.:

1. Heard the learned Counsel for the Petitioners and the Learned A.G.P. for Respondent Nos.2 and 3. Respondent No.1 is absent, though duly served. In the above, the Petitioners are challenging the order dated 27th February, 1991 passed by Respondent No.2 - Additional Commissioner, Konkan Division, Bombay.

2. The Petitioners are the purchasers of the suit lands from the original owner by a sale deed dated 7th December, 1971 and the Petitioners claim that they are in actual physical possession and cultivating the said land from the time of purchase. It appears that the said land originally belonged to one Kulsumbibi w/o. Najamoddin Khatib. As per the Record of Rights, the

name of Respondent No.1 was shown as a tenant. It appears that in a proceedings by way of an inquiry under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, the Agricultural Lands Tribunal and Additional Mamlatdar and A.L.T.No.2, Kalyan had conducted an inquiry and passed an order dated 11th March, 1962. In the said order it is categorically stated that Respondent No.1 Malu Balu Hawale shown as a Tenant with regard to the land belonging to the said Landlady on the Tillers day. It appears that in pursuance of the said inquiry, it was found that the said Malu Balu Hawale had never cultivated the land as a Tenant during the last 8-9 years and the same has been cultivated by the said Kulsumbibi w/o. Najamoddin Khatib. The Agricultural Tribunal, by its order dated 11th March, 1962 gave a categorical finding that there was no relationship of Landlord and Tenant on the Tillers day. Hence, the inquiry proceedings initiated under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 was dropped. Over and above, the Tribunal had directed that the name of the Malu Balu Hawale should be deleted from the Revenue Record and the parties were also informed about the same fact. It appears that the said corrections were not carried out physically, and suddenly, the Additional Tahsildar and A.L.T. Ulhasnagar initiated a Sou Motu proceedings relying upon the village extract presuming that the suit land

was transferred to non tribal transferee and accordingly action under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was initiated. In fact in the said proceedings, it is vital note that the said Malu Balu Hawale had categorically stated that he had no concern whatsoever with regard to the suit land. Accordingly, the proceedings under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was dropped by the said Additional Tahsildar by an order dated 30th June, 1979.

3. Thereafter, the Additional Commissioner, Konkan Division, Bombay again initiated a proceedings under section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 against the aforesaid order of the Additional Tahasildar and A.L.T.Ulhasnagar dated 30th June, 1979. The Additional Commissioner, in his order dated 27th February, 1991, in paragraph-3, observed that in fact Respondent No.1 had clearly contended that only his father and grandfather were tenants and also that he does not want the restoration of the land. In spite of the same, the Additional Commissioner had passed the order directing the suit land to be transferred to Respondent No.1. Aggrieved thereby, the Petitioners have approached this Court challenging the same.

4. The learned Counsel appearing on behalf of the Petitioner, strongly contended that Respondent No.1 had never become the owner of the land on the Tillers day under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. In that behalf, the learned Counsel referred to a Division Bench Judgment of our High Court in the case of **State of Maharashtra and another Vs. Khatua Makanji and Company Pvt. Ltd., Bombay and others, (1987) Mh.L.J. 908,** wherein this Court had clearly observed in paragraph Nos.4 and 5, as under :-

> 4. The short point that requires consideration in these appeals is whether the disputed agricultural lands were transferred by the Tribal tenants to the landlords during the material period. Section 32 of the Tenancy Act, no doubt, provides that on April 1, 1957 the tenants shall be deemed to have purchased the lands from their landlords subject to the provisions of that section and succeeding sections. Obviously, this provision is subject to the conditions laid down in that section and succeeding Sections 32A to 32R. Section 32G in particular inter alia provides that the Tribunal shall first ascertain whether the tenants were willing to purchase the land. If it was found that the tenants were not willing to purchase the land in terms of sub-section (3), the Tribunal would make an order declaring that the tenant was not willing to purchase the land and that the purchase had become ineffective. On the other hand, if the tenant was found willing to purchase the land, the Tribunal was required to determine the purchase price of land in accordance with the provisions of Section 32H and Section 63A(3). The purchase was also to become ineffective as laid down in Section 32M on the failure of the tenants to pay the purchase price. Reading the provisions of Sections 32 and 32A to 32R particularly Sections 32G and 32M, it is evident that in

terms of Section 32 the tenants do not really become purchasers and get only a right to purchase the land subject to the fulfilment of conditions of that section and succeeding sections. In other words, legal title over the agricultural lands does not vest in the tenants until all such conditions are satisfied including the payment of purchase price of lands. **There is no dispute that in the case before us the tenants having categorically stated that they were not willing to purchase the lands in dispute, the Tribunal had declared the purchases to be ineffective. Tenants having never become owners of the agricultural lands in dispute, we find it difficult to appreciate how could they transfer the same to any body including the landlords herein."(Emphasis supplied)**

5. "The thrust of Shri Shinde's argument has been that under Section 32 the tenants were deemed to have purchased the lands. If the purchase became ineffective on account of certain acts of omission and commission on the part of the tenants, the case could not be equated with a case of no purchase having taken place at all. It will be according to him, a case of purchase by the tenants and then repurchase by the landlords. In order to appreciate Sri Shinde's submission, it is desirable to refer to the provisions of Section 2(1)(i) of the Restoration Act which defines the word 'transfer':

> "(i) "transfer" in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either -
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> (a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos, or
>
> (b) under a decree or order of Court, or
>
> (c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrears of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force

> but does not include a transfer or land falling under the proviso to sub-section (3) of the Code; and the expressions, "Tribal-transferor" and "non-Tribal-Transferee" shall be construed, accordingly."

> It is evident that subject matter of 'transfer' in the definition clause is "land belonging to a tribal". The use of expression "belonging to a Tribal" after the expression of "transfer of land", to our mind, makes it abundantly clear that the question of transfer can arise only if the agricultural land belonged to the Tribal i.e. the title in the agricultural land vested in the Tribal. We have already held that the title in the disputed land never vested in the Tribal tenants in this case as the purchases became ineffective at the very threshold when they made statements that they were not willing to purchase the lands. In the circumstances, we do not see any difficulty in holding that the tribals herein had not transferred any agricultural lands belonging to them to the respondents nor were the respondents deemed to have purchased these lands during the material period from them and consequently Sections 3 and 4 of the Restoration Act have no application in this case."

5. The learned Counsel for the Petitioners state that in the present case, it is clear that the title of the land never vested in the Tribal tenant. In as much as the Tribal tenant Respondent No.1 had never complied with the provisions of section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 and the legal title of the said agricultural land does not vest in the tenant, till all such conditions are satisfied including the payment of purchase price of the land. There is no dispute in the present case that Respondent No.1 had not taken any such steps and

complied with the same as such the land never vested in the Tribal and in view thereof, there can never be any transfer of land. Under the aforesaid facts and circumstances of the case, the impugned order is totally unsustainable in law, as the land never vested in the Tenant. Hence, the Rule is accordingly made absolute, whereby the impugned order dated 27th February, 1991 passed by the Additional Commissioner stands quashed and set aside, however with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)